

### **DETAILED ACTION**

1. This Office Action is in regards to the BPAI Decision issued 3/31/2010.

#### ***Allowable Subject Matter***

2. Claims 1, 3-5, 7-9, 11-13, 15-19 are allowed for the following reasons.
3. The closest prior art of record, Nelson in US 5,974,122, hereafter Nelson, fails to disclose certain limitations as follows.

As argued by Applicant in the Appeal Brief filed 5/27/2010, "fax machines, which transmit messages over telephone lines, are clearly not the same as messaging servers which transmit messages over a computer network." (Appeal Brief Filed 5/27/2008, Page 7, paragraph 1). Thus, a distinction is present in the instant claims over a traditional fax machine for the reason that traditional fax machines transmit messages over telephone lines, while the messaging servers of the instant claims transmit messages over a "computer network."

Further, as in the reply brief filed 10/21/2008, the definition of the term "invoking," as in claim 1, is found in the instant specification, page 5, line 28 to page 6, line 3. Thus, the term "invoking," as argued by Applicant and affirmed by the BPAI on 3/31/2010, invoking requires that the server is designated as the destination of the message, meaning that claim 1 requires that another messaging server is designated as the destination of the message if the messaging server does not become operational (BPAI decision from 3/31/2010, page 7, paragraph 5 to page 8, paragraph 1).

Finally, as argued by Applicant in the reply brief filed 10/21/2008 and affirmed in the BPAI decision issued 3/31/2010, while claim 1 presents conditional statements with many of the steps, where the steps only occur when a certain condition is true, the instant claims require within their scope each and every possibility disclosed in the instant claims. For example, claim 1 has three possible conditions, where the messaging server is operational, where the messaging server is inoperable but becomes operable, and where the messaging server is inoperable and never becomes operational. Thus, to be within the scope of the instant claims, a reference must disclose each of the three conditions and the method as required by each of the three conditions. Thus, as Nelson does not disclose at least invoking as required by the instant claims, and does not disclose each and every step of the instant claim, including each and every possibility for the conditional statements, the instant claims distinguish over Nelson.

4. Further, Ozzie in US 6,859,821 includes the same deficiencies as Nelson in view of Applicant's arguments and the BPAI decision issued 3/31/2010.

5. Further, Mead in US 2001/0036822 fails to provide details of invoking, in as much detail as required by the cited passage of the specification, and does not provide for each possibility of the conditional statements in each step of the instant claims.

6. Thus, in light of the BPAI decision issued 3/31/2010, the Appeal Brief filed 10/21/2008, and the Appeal brief filed 6/26/2008, and the interpretations of the instant claims included therein, the instant claims are distinguished over the closest prior arts of record for at least the reasons stated above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571)270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/S. C./  
Examiner, Art Unit 2444

/William C. Vaughn, Jr./

Supervisory Patent Examiner, Art Unit 2444